

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY  
AVERAGE WHOLESALE PRICE  
LITIGATION

M.D.L. No. 1456

THIS DOCUMENT RELATES TO:

CIVIL ACTION NO. 01-12257-PBS

**ALL CLASS ACTIONS**

**CASE MANAGEMENT ORDER NO. 26: CLASS NOTICE AND TRIAL SCHEDULE**

July 7, 2006

Saris, U.S.D.J.

After three hearings, including two evidentiary hearings, pursuant to Fed. R. Civ. P. 23(c)(2)(B), the Court issues the following orders regarding class notice and trial schedule.

1. With respect to Class 1 and Class 2, the plaintiffs shall use the forms of notice attached as Exhibits 1 through 4 to the Declaration of Edward Notargiacomo, filed June 30, 2006. (Docket No. 2811.) The plaintiffs and the Track 1 defendants have conferred and agreed to the notices, and the Court finds that the form and content of the notices "concisely and clearly state in plain, easily understood language" the required elements of Fed. R. Civ. P. 23(c)(2)(B). Any members of the classes shall be given no less than 30 days from the mailing or publication to opt out.
2. The parties shall continue to confer regarding toll-

free phone scripts and web-site content. Any disputes shall be briefed and filed by July 26, 2006.

3. The jury trial against AstraZeneca relating to the drug Zoladex shall begin on March 5, 2007 @ 9 a.m.
4. With respect to Class 1, the plaintiffs shall provide individual notice by first class mail to the Medicare beneficiaries who took a Subject Drug<sup>1</sup> from 1991 to 2004 and are still alive. Based on the report of the United States Department of Health and Human Services ("HHS") filed on June 30, 2006, production of the information required for this mailing will take about six months. (Docket No. 2809.) HHS official John Alexander Fletcher informed the Court that HHS has a 95% deliverable rate, and the Court finds this to be a reasonable method of identifying, and the best practicable method of contacting, Medicare beneficiaries.
5. HHS shall produce the data as soon as possible, but no later than January 5, 2007, in the data format agreed upon by HHS and Complete Claims Solutions, the plaintiffs' vendor issuing the individual notices, to facilitate creating the mailing labels.

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<sup>1</sup> The Subject Drugs are identified in the lists attached to this Order.

6. After an evidentiary hearing where plaintiffs' expert Ms. Katherine Kinsella testified, the Court adopts the revised publication plan outlined in the Affidavit of Katherine Kinsella (Docket No. 2812) as the most reasonable way to find heirs of deceased Medicare beneficiaries and to supplement mailed notice. Defendants have not objected to the revised plan, and the Court finds it is reasonable.
7. Any opt out shall be post-marked by **February 19, 2007**.
8. With respect to Class 2 and 3, the plaintiffs shall send out individualized notices forthwith to all the third-party payors by **August 1, 2006**. All notices in trade magazines or elsewhere shall be published as soon as possible. Any opt-outs shall be filed by **October 1, 2006**. The bench trial on the claims of the third-party payors under Mass. Gen. Laws ch. 93A will start with respect to all Track 1 defendants in **November 2006**.
9. With respect to claims against the Track 2 defendants, the plaintiffs shall subpoena HHS beneficiary records from 1991 to 2004 for claims against the Track 2 defendants as soon as possible.

  
PATTI B. SARIS  
UNITED STATES DISTRICT JUDGE